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Thank you for inviting DOT to give its views on the rail economic regulatory provisions of the Interstate Commerce Act.

Our charge under Sect. 210(b) of the TIRRA was to closely examine the Interstate Commerce Commission's functions to determine which are still needed in today's competitive economy, which can be repealed or amended, and where they should be administered. Before I outline our recommendations on specific rail provisions, I'd like to take a few minutes to discuss the way we approached our review.

The rail economic regulatory structure that existed between 1887 and 1980 developed because railroads, much like public utilities, have certain characteristics of "natural" monopolies: the cost of providing multiple, competitive rail services to each and every shipper is prohibitive. The regulatory regime established over the years resembled that used for other natural monopolies, such as gas, electric and telephone companies. From the late 1800's to the early 1900's, that approach made a good deal of sense. Rail was the only game in town, and regulation was designed to constrain potential abuses by railroads and to set reasonable rates for shippers. The ICC regulated all facets of railroad operations such as line construction and abandonment, mergers, conditions of service, and car supply and tariffs; its objective was to reconcile and balance the conflicting interests of the railroads, shippers, and communities, always with the overarching need for an efficient national rail system.

With the emergence of strong competitive alternatives, chiefly motor carriers, but also pipelines and barges, rail's monopoly power was eroded, in part because the other modes operated under significantly less regulation, and had considerably more flexibility to tailor rates and services to meet shippers' needs. The railroads, which at that point had significant excess capacity and were saddled with a rigid regulatory system, were unable to respond effectively or rapidly. By the late 1960's,

the nation was left with a rail industry providing inadequate service at high rates, with a poor safety record and inadequate profit to maintain the system. Only those with no alternatives were shipping by rail. In the 1970's, these problems came to a head - eastern and midwestern railroads representing about one-quarter of the nation's track miles were bankrupt.

Congress first addressed the rail problems in the Northeast, forming Conrail out of 7 bankrupt carriers, eliminating duplicative lines and investing in the remaining system to develop a railroad that could be financially viable in the private sector. While this solution ultimately proved very successful, it was also extremely costly -- over time approximately $ 7.8 billion was spent buying lines from the bankrupt companies, investing in plant and equipment and other actions necessary to make Conrail self-sustaining. Congress chose not to take the same approach when, in the mid 1970's, it was faced with the bankruptcies in the Midwest. Instead, the lines of the bankrupt carriers were sold to other railroads or allowed to be abandoned.

Congress recognized the critical role that inflexible, unchanging regulation had played in creating these crises. To prevent complete financial collapse of the industry, it was essential that the Interstate Commerce Act be revamped to reflect the competitive realities faced by railroads. The Staggers Rail Act, passed in 1980, was the Congressional response.

This legislation introduced significant rate deregulation, allowing pricing flexibility where competition is effective to protect shippers from abuse. It also retained significant protections for shippers in situations where competition is either absent or weak. Other parts of the Staggers Act show this same balance between flexibility and protection. For example, the approval process for line abandonments was shortened considerably, recognizing the carriers' need to divest assets no longer producing sufficient revenues. However, Congress also ensured that local rail service could be maintained, by mandating that those willing to continue rail operations could acquire an abandoned line.

Perhaps the most significant reforms of the Staggers Act were the recognition of the need for differential pricing in the rail

industry and the ability of railroads and shippers to sign contracts for service. The widespread availability of alternatives for most rail traffic means that a carrier must set rates to meet its competition in these markets. Requiring all shippers to bear a similar proportion of overall system costs would drive away traffic that had a lower cost alternative. Captive shippers, those with no alternative but rail, would be left bearing all the costs of rail service -- or carriers would be forced into bankruptcy.

As a result of the Staggers Act reforms, the health of the industry has improved significantly: for the 12 months ending September 30, 1994, the railroad industry earned an average 8.4 percent return on its net investment base, doubling its return of 1980 while maintaining its market share of about 38 percent. Carriers have invested approximately $190 billion in infrastructure and equipment since 1980, allowing much needed rehabilitation and modernization of the nationwide rail system.

Best of all, the rail industry's transformation has not been at the expense of shippers. Overall real (inflation-adjusted) freight rates have dropped 1.6 percent per year since 1980 -- over 33 percent overall. Coal rates have declined 1.8 percent per year; grain and chemicals 1.2 percent; and rates for miscellaneous mixed shipments -- a key component of intermodal traffic -- have dropped 2.2 percent annually. Clearly, a wide cross-section of rail shippers -- including some thought to be captive -- have benefited from Staggers Act reforms.

The rail industry is now relatively healthy, and the critical freedoms of the Staggers Act must be maintained if it is to remain financially successful. Moreover, the basic shipper protections that were incorporated in 1980 are still needed today to ensure that rates and services for captive traffic are reasonable. However, there are many aspects of the rail regulatory system that can be revised, modified or even eliminated in light of today's and tomorrow's competitive realities.

There are four general areas of rail economic regulation that can be regarded as the ICC's most significant responsibilities -- mergers, maximum rate regulation, passenger issues and abandonments.

DOT has already testified before this Committee that we believe there is no longer a need for specialized provisions for railroad mergers. Consolidations among rail carriers should be treated in the same manner as those in any other industry, and reviewed by the Department of Justice under the Clayton Act.

Maximum Rate Regulation: In the Staggers Act, Congress recognized that the competitive market, where it existed, offered the best protection for shippers against potential abuse by a railroad. Therefore, the Act preserved ICC regulation of maximum rate levels only where competition was absent or ineffective. Rates that meet certain conditions (primarily, not exceeding a statutory rate-to-variable cost ratio) are presumed reasonable; for rates not meeting this prima facie test, the ICC must determine that competition is nonexistent or ineffective before it may prescribe a maximum reasonable rate.

Only about 16 percent of rail traffic, based on revenues, moves under rates subject to ICC maximum rate jurisdiction. There are three reasons for this. First, most traffic meets the prima facie rate-to-cost test. Second, the Commission has used its exemption authority under 49 U.S.C. 10505 to exempt major classes of traffic (including intermodal shipments, boxcar traffic, and grain mill products) from all regulation, because there is sufficient competition to ensure reasonable rates. Finally, a significant proportion of rail shipments moves under contracts negotiated between shippers and carriers, and the ICC has no authority to review contract rates.

The relatively few maximum rate cases that have come before the ICC in recent years could be taken as an indication that there are few "captive" shippers. However, it is probably true that not all rail markets are competitive. Many shippers of coal, grain and chemicals strongly support continued maximum rate regulation, since they believe they have few economic alternatives to rail transportation.

Recommendation: It is essential that the existing statutory protections for captive shippers established by the Staggers Act be maintained. Differential pricing, administered through the market for most shippers, is the most effective way of balancing railroad and shipper needs. For shippers where competition is

absent or ineffective, the rate reasonableness provisions allow for an effective simulation of a market-based price. However, we recognize that the existing approach used in developing a maximum rate level -- the ICC's Constrained Market Pricing procedures -- can pose significant hurdles for small shippers or those with few financial resources. Therefore, we propose that DOT continue the ICC's efforts to refine and simplify the procedures, especially for smaller shippers, so that they are not unduly burdened by the time and costs of pursuing a maximum rate complaint.

Passenger Transportation: The ICC has jurisdiction over passenger rail transportation as well as freight transportation. With the demise of the private rail passenger industry and the formation of Amtrak, most of the ICC's activities in this area relate to adjudicating disputes between Amtrak and the freight railroads, over whose tracks Amtrak operates. (And, conversely, similar disputes in the relatively rare cases where a freight carrier operates over Amtrak's track.) The ICC also has jurisdiction over aspects of commuter rail services, including authority to regulate route discontinuances. Additionally, with the growth in commuter rail services, the Commission is seeing more cases related to commuter rail access to freight railroad lines.

Recommendation: It is essential that a forum continue to be available to resolve issues between Amtrak and commuter railroads on the one hand, and the freight railroads, on the other, as issues of track access, fees and other matters continue to arise. Absent such an organization, disputes would be resolved by the courts, a long and expensive process with an uncertain outcome given their lack of rail expertise.

With respect to commuter issues, there is no need to continue federal oversight of service starts or discontinuances. This oversight was needed when privately-owned railroads provided commuter service, to balance community interests with a carrier's financial needs. Today, commuter service is provided by public agencies, either directly or through contracts with private operators. However, there is still a need for federal oversight on issues concerning commuter rail access to freight right-of-way, to ensure that commuter service can operate efficiently and that interstate commerce is not unduly affected by local passenger traffic.

Line Abandonments: A railroad may not abandon or discontinue service over a rail line without prior approval from the ICC. The ICC must balance the railroad's need for adequate revenues with the community's need to preserve necessary service. Lines where there has been no overhead (i.e. non-local) traffic for at least two years may be abandoned automatically, under an exemption established by the Commission. The Commission has also, as a policy, granted approval for abandonments where the carrier's costs were not covered by revenues generated by the line. In recent years, few abandonment requests have been denied.

The ICC's process provides notice and opportunity for shippers, communities, and new operators to develop alternatives to abandonment. Under the Staggers Act, the ICC can require a railroad to sell a line proposed for abandonment to another operator at the line's "net liquidation value," even if the railroad has higher offers for the line for non-rail use. This is to assure that, if at all possible, rail service can be maintained. This provision has been extremely successful -- 261 small railroads formed since 1980 are currently providing local and regional rail service on lines "spun off" by larger carriers.

There are a number of ICC programs that relate directly to the ICC's authority over abandonments:

Financial Assistance Program: The Staggers Act provides incentives to preserve rail service on lines that would otherwise be abandoned. In order to maintain uninterrupted service, the ICC has a program that sets conditions for developing purchase prices or subsidy agreements for such lines, if the railroad and the potential buyer cannot agree. The ICC also examines the financial credentials of potential purchasers or subsidizers, to ensure that abandonment applications are not subject to undue procedural delays because of impractical offers.

Rails-to-Trails: This program facilitates voluntary preservation ("railbanking") of rights-of-way that would otherwise be abandoned, by working with carriers, states and local groups to convert otherwise unwanted lines into non-motorized trails.

Feeder Line Development Program: This program allows the ICC to require the sale of a rail line whose shippers are not being adequately served. These cases (which have been rare) seem to occur when a railroad is considering abandoning the line but has not yet filed an application to do so.

Recommendation: The requirement for prior federal approval of an abandonment should be eliminated, but federal oversight over abandonments should be retained to ensure adequate advance notification to affected shippers and communities, and to administer these three programs that promote creation of shortline railroads and railbanking. DOT would actively pursue administrative steps to simplify the application and paperwork burden, particularly for small carriers seeking to abandon service.

Other ICC Functions

There are over 200 other rail-related provisions of the Interstate Commerce Act, in addition to the four major functions discussed above. Many are critical to carrying out the Staggers Act's twin goals of allowing competition to function, while protecting shippers where competition is nonexistent or ineffective. Some provisions -- such as the authority to enforce USDA standards for livestock -- are anachronisms that have outlived their usefulness. Others, while minor, are very necessary. The following discussion analyzes the most important functions DOT recommends be maintained (either as they currently exist or in modified form) as well as many of the functions that can be eliminated as unnecessary or outmoded.

Exemption Authority: One of the primary aims of the Staggers Act was to give the rail industry the flexibility to provide services and rates in a competitive market. The exemption provision charges the ICC to exempt rail carriers, services, and transactions from regulatory scrutiny where the agency finds that regulation is not necessary to carry out the Rail Transportation Policy, and the transaction or service is of limited scope or shippers do not need protection from the abuse of market power. (The Commission may not exempt carriers from intermodal ownership prohibitions, from loss and damage obligations, or from labor

protection obligations.) The Commission also has the authority to revoke an exemption if it finds it to be necessary.

The exemption provision has proven to be one of the Staggers Act's most significant innovations. Using this broad authority, the ICC has exempted significant classes of traffic subject to intense competition -- e.g., intermodal shipments, perishables, and a wide range of manufactured items. It has also exempted transactions such as line sales to new carriers, joint relocation projects, voluntary trackage rights agreements and, under certain circumstances, abandonments. The traffic exemptions have allowed railroads to retain or increase market share and meet competition by offering innovative rates and services without regulatory lag. The exemptions of transactions have also lifted significant paperwork burdens for actions that were approved routinely, thus cutting administrative costs for the railroads (and, ultimately, shippers) and the ICC itself.

Recommendation: This authority to lift regulatory requirements administratively should be retained, and used aggressively. It has proven to be a particularly useful way to promote competition and eliminate costly regulatory lag and unnecessary paperwork.

Rail-Shipper Contracts: Along with the exemption authority, the legalization of railroad/shipper contracts has proven to be among the most important reforms of the Staggers Act. Prior to 1980, railroad contracts were held to be anticompetitive, despite the fact that such agreements were legal for barges and motor carriers. The ICC had long held that rail contracts "tied up" traffic covered by the agreement, preventing other carriers making the shipments as long as the contract was in force.

Since 1980, rail contracts have been widely accepted; over 15,000 new or extended contracts are filed annually, covering all classes of traffic, with terms ranging from several days to several years. It is clear that they have become a routine way of doing business for both railroads and shippers. However, certain statutory limitations and reporting requirements, imposed when rail contracts were a new concept, have outlived their usefulness.

Specifically, there is still a statutory requirement that railroads file both complete contracts and summaries that contain

nonconfidential data, although the ICC granted a partial exemption in 1992 that requires only filing a summary for non-grain contracts. Grain contracts have not been exempted, and the statute requires that the full text be filed. Railroads must have advance approval to commit more than 40 percent of any one car type to contract service. Grain shippers and ports have certain rights to challenge contracts as discriminatory, although the ICC indicates that these rights have been very infrequently exercised.

Recommendation: Fourteen years of successful experience with rail/shipper contracts appears to have mitigated, if not completely eliminated, much of the apprehension with which these agreements were greeted in 1980. Railroad contracts should be treated in the same manner as contracts for any other form of transportation. They should be unregulated, confidential, and left to the courts to enforce.

Labor protection: The Commission is required to impose labor protective conditions on three categories of rail transactions: rail carrier consolidations; lesser forms of inter-carrier consolidations through line transfers, leases, and trackage rights arrangements; and line abandonments. These conditions must provide an arrangement that is at least as protective for employees who are adversely affected by the transaction as the protection historically imposed by the Commission and contained in the legislation creating Amtrak. Protection imposed in these transactions is not subject to bargaining under Railway Labor Act procedures, thus eliminating any lag in implementing the transaction.

Recommendation: To preserve smooth and rapid facilitation of mergers, other consolidations, line sales and abandonments, we believe this provision should be retained and administered by the Department of Labor.

Line transfers, leases and trackage rights and line sales to non-carriers: The ICC has broad oversight of "[a]greements between carriers for a transfer of operating authority from one railroad to another or for joint use of facilities -- by line sales, leases, or trackage use arrangements. All these require prior review and approval under a public use standard. ICC approval automatically confers antitrust immunity from other federal and

state laws that might otherwise be used to block such a transaction.

Section 11343, which applies to transactions between existing carriers, covers consolidations of operations short of a merger of two complete rail systems -- voluntary trackage rights, sales, joint facilities operations, for example. Many of the routine actions under this provision have been exempted under 49 U.S.C. 10505, most importantly transfers between carriers that do not create a contiguous rail system. (Certain transfers raise competitive issues similar to those involved in mergers.) Approval, whether through the exemption process or through ICC review, preempts otherwise applicable state regulations. Employees affected adversely by these transactions may be entitled to labor protection.

Section 10901 covers line sales to "non-carriers" -- interpreted as new railroads. The Commission applies a broad "public convenience and necessity" standard in deciding these matters. There are two major purposes of this provision: (1) to ensure that the public is not harmed by transfers of lines to entities that are not able to provide needed rail service, and (2), to ensure that the buyer is truly a "non-carrier", since labor protection is not mandated for transactions under this provision, in contrast to those under falling under Section 11343.

Many of the 261 shortline railroads created since 1980 and still in operation were formed by sales under Section 10901, preserving local service (and over 8,000 local jobs), on lines that would otherwise have been abandoned by Class I carriers. The Commission's chief concern has been to ensure that these sales are indeed sales to a new "non-carrier" and not sham transactions designed solely to avoid labor protection. Many transactions under this provision have been exempt from filing requirements, save advance notification, with the burden on opponents of a transaction to demonstrate why the Commission should investigate the sale in depth.

Recommendation: We believe that, like rail mergers, overall review of line sales, transfers, trackage rights and other joint facilities agreements should be performed under the antitrust laws by the Department of Justice. However, it is important to continue distinguishing between sales to existing and new

railroads, in order to stimulate creation of new shortlines and preserve local rail service. Therefore, we recommend that the provisions be revised to preserve authority for DOT to rule on whether the purchaser of a line is an existing carrier or a non-carrier, for labor protection purposes. This responsibility could continue to be exercised under the exemption procedures established by the ICC.

Reasonable Practices: The ICC has authority to review a railroad's practices with regard to shippers, including such items as storage charges on empty rail cars, use of privately-owned cars, and inspections of grain cars. In the past, captive shippers have claimed that they receive poorer service than shippers with transportation options; reduced service is often equivalent to increased rates.

Recommendation: Authority over practices is appropriate in cases where maximum rate regulation is necessary, since a railroad might be able to change its practices in lieu of a rate increase (e.g. raise storage charges on cars). If a railroad does not have market power, the carrier's ability to engage in unreasonable practices is limited by competition. Therefore, DOT believes jurisdiction over reasonable practices should be modified to cover only those circumstances involving captive shippers.

Rail Car Supply and Interchange: The ICC has authority over the terms and conditions -- including price -- under which railroads make their equipment fleet available to shippers and other carriers. Railroads may set these terms and conditions collectively, through agreements that receive antitrust immunity. Antitrust immunity may also be granted to car pooling agreements. These agreements are designed to ensure that cars can be interchanged freely and efficiently throughout a nationwide rail system.

Regulated or collectively-set rates cannot ensure that the carriers will acquire and maintain sufficient equipment to serve shippers. Recognizing that market-based pricing is the only way that carriers can earn a rate of return that will allow investment to sustain an adequate car fleet, the ICC has completely deregulated the setting of prices -- per diem, or car hire -- for some types of rail equipment, including trailers used

in intermodal service. Car hire for all other equipment purchased before January 1993 is being deregulated over a 10-year period that started in January 1994, based on an agreement negotiated among all classes of railroads and other car owners, and adopted by the ICC. Equipment bought since January 1993 has been deregulated.

Recommendation: Agreements that set operating practices and rules can be established without antitrust risk; therefore, removing antitrust immunity for such agreements will not jeopardize efficient rail car interchange. However, the car hire rate rules established under the negotiated agreement represent a significant effort by all parts of the rail industry -- large and small railroads, investors and the ICC -- to phase in deregulation gradually, and not unduly disrupt efficient interchange. Therefore, authority to oversee the negotiated agreement should be continued until the 10-year deregulation period is completely phased in.

Rail Service orders: The ICC issues orders that authorize a rail carrier to use the equipment or lines of another rail carrier that suddenly fails to provide service -- for example, in the case of bankruptcy or natural disaster.

Recommendation: This function should be retained to preserve service to shippers in emergencies, should agreements between carriers not be reached in a timely manner.

Competitive access: This authority covers applications to grant one railroad reciprocal switching or terminal access trackage rights over another railroad. It provides a mechanism to increase competition in cases where such a remedy is deemed appropriate. Competitive access is another tool for assuring that captive shippers receive adequate service at reasonable rates. However, it must be exercised judiciously.

Recommendation: We believe competitive access authority should be retained in its current form. However, it should only be considered as a remedy in captive shipper situations.

Line Construction: ICC approval is required for the construction of new rail lines or line extensions. The original purpose of this provision was to protect railroads from themselves, by

assuring that construction projects would not drain the resources of the railroad and reduce their ability to serve existing shippers. Currently, the Commission's review covers all environmental and community impacts of the construction, and ICC approval prevents attempts by competitors to block crossing of their rights-of-way. Most of these cases involve extending a line to offer a shipper, often a utility or a mine, a competitive alternative to the service offered by its existing rail line.

Recommendation: We believe this provision should be retained in a modified form, only to preserve authority over new construction where it would cross another railroad's line. It is important to ensure that new service cannot be blocked by other carriers seeking to prevent additional competition; however, it is also critical that the new line not interfere unduly with operations on the line to be crossed. Only an agency with expertise in rail operations can make that determination.

Recordation of Liens: A mortgage, lease, equipment trust agreement, or conditional sales agreement relating to a railroad car or locomotive filed with the ICC "is notice to, and enforceable against, all persons," and satisfies other federal or state laws relating to the recordation of documents. Without a centralized nationwide system, financing documents related to rolling stock would have to be recorded in 49 states, Canada and Mexico, because US equipment moves about so widely. In some states, recordation might have to be made in every county as well. To maintain the recordation system privately at a national level would require amending the Uniform Commercial Code to preempt state law.

Recommendation: The system administered by the ICC is an effective, low cost and valuable service for the railroad and financial sectors. Requiring recordation of liens at the state (or county) level would be extremely burdensome and costly for an industry that operates nationwide, and might add significantly to the cost of financing rail equipment. Therefore, we recommend the system initially be maintained at the federal level, funded entirely through user fees. However, DOT will study the possibility of privatizing the system.

State Certification: Since the Staggers Act, states may not regulate intrastate railroad rates and rate-related matters,

except in accordance with the standards and procedures of the ICA, and only if the Commission certifies that the state's standards and procedures comply with the ICA. In the 1970's, restrictive state regulations on abandonments and rates contributed significantly to the rail industry's decline. This provision was included in the Staggers Act to ensure that restrictive state regulation would not hinder interstate commerce or interfere with the interstate rail system, or thwart the regulatory reforms of the Act.

Recommendation: Federal and state rail economic regulation must be consistent; however, the certification procedures are a cumbersome means of achieving this consistency. Instead, we believe state authority should be preempted by statute, as was recently done with motor carrier regulation under P.L 103-105. Without federal preemption, rail transactions would be subject to numerous state and local laws. Securing approval for actions would become more, rather than less, burdensome, and transactions that promote efficiency in the rail industry would be jeopardized.

Rates on Non-Ferrous Recyclables: Congress has established a number of statutory provisions to encourage industrial use of recyclable materials. In particular, for recyclables other than scrap iron or steel, rail rates must be maintained at revenue-to-variable cost ratio levels no greater than the average cost ratio that carriers would be required to realize in order to cover total operating expenses plus a reasonable profit.

Recommendation: Support for recycling may be justified on the basis of a public policy. However, railroads and other shippers should not be required to cross-subsidize recyclables shipments, which could be the result of rate levels set by statute or regulation. Moreover, intermodal competition will likely assure competitive rates. We believe these specialized provisions should be repealed.

Rate Discrimination: A railroad "may not subject a person, place, port, or type of traffic to unreasonable discrimination." Additionally, shippers may not be charged a greater rate for shipments over a portion of a route than the rate for shipment over the entire route (the "long haul/short haul provision"). The rate discrimination clause was intended to prevent shippers

from being denied "equal" access to the national rail system through disparate pricing. Contracts, joint rates and rates over different routes are not subject to the provision, and the Commission has exempted all rail rates and charges from the need for approval prior to departing from the long haul/short haul provision.

Recommendation: This provision is a holdover from the pre-Staggers Act era, when rate equalization was the standard and carriers practiced collective ratemaking. It is an anachronism that runs contrary to the Staggers Act's emphasis on flexible and competitive ratemaking. We recommend that it be repealed.

Commodities Clause: A railroad may not transport in interstate commerce an article or commodity (other than timber and timber products) that is owned by the carrier or manufactured, mined, or produced by the carrier or under its authority, unless the commodity is necessary and intended for use in the business of the carrier (e.g., ballast). This provision prevents railroads from competing with shippers whom they serve. While this ban may have been justified in an era when railroads had significant monopoly power and owned mines or mineral rights, it seems irrelevant today. Indeed, to the extent that there is concern regarding this issue, it is that the clause inhibits shippers from purchasing lines that would otherwise be abandoned.

Recommendation: This provision serves no purpose in today's environment, and we believe it should be repealed.

Antitrust Immunity for Rail Activities: This authority exempts certain specific activities from federal and state antitrust laws and covers: rail consolidations; intercarrier line transfers, leases and trackage rights; pooling agreements covering traffic, service, equipment, or revenues; and certain joint ratemaking activities. Once the specific activity is approved by the Commission, it is immune from challenge as anticompetitive. For example, the ICC approves pooling agreements such as Trailer Train (a company established by the major railroads to own and operate a pool of certain types of cars -- e.g. autorack cars, intermodal flat cars -- that are operated according to the pooling agreement) and other activities that otherwise might come under Department of Justice scrutiny as anticompetitive.

Recommendation: DOT has already testified that rail mergers and consolidations should not receive special protections under the antitrust laws. Similarly, we believe that operating agreements such as those that cover equipment pooling should be reviewed under the antitrust laws, and not afforded antitrust immunity. Under the "rule of reason" test employed by the Department of Justice to evaluate joint ventures, efficiencies and economies are balanced against anticompetitive effects, just as in an investigation under the Interstate Commerce Act standard. We do not believe antitrust immunity needs to be retained to ensure smooth and interconnected rail operations.

Interlocking Officers and Directors: A person may not serve as a director or officer of more than one rail carrier unless the ICC has determined that public or private interests will not be adversely affected. This restriction is intended to prevent one carrier being operated for the benefit of another in a manner that results in a lessening of competition. The Clayton Act, however, already contains a provision that prohibits potential anticompetitive interlocks.

Recommendation: There is no need for the railroad industry to have greater restrictions on officers and directors than other industries. We recommend that this provision be repealed, and the general interlock provision of section 8 of the Clayton Act should apply.

Railroad Securities: By statute, railroads are required to obtain ICC authorization to issue securities or to assume an obligation or liability with respect to the securities of another. Unlike securities in other industries, the ICC's authority protects railroad securities from review and revision by states.

Recommendation: This provision predates the broader securities laws in place now. There is no reason to continue separate requirements and review procedures for rail securities. The Securities and Exchange Commission, states and other government entities should be able to adequately deal with any issues this provision was designed to address.

Rail Valuation Studies: The ICC is charged with valuing all property owned or used by each rail carrier. These

determinations of "fair value" were intended to supply the basis for determinations of rate reasonableness. The ICC now relies on book value, rather than independent field evaluations, to value property for regulatory purposes.

Recommendation: There is no reason to retain this provision.

Minimum Rates: Rail carriers are prohibited from establishing rates below a "reasonable minimum" to protect railroads from rate wars and "destructive competition." The Commission has held that this minimum is effectively the "out-of-pocket" cost incurred in providing the service.

Recommendation: This authority should be repealed. In today's market there is significant intermodal and intramodal competition, with easy entry for motor and water carriers. In addition, while less pervasive, there is the possibility of rail entry, through purchase of existing lines). Thus, we do not believe there is a need to protect competitors from each other.

Intermodal Transportation: The ICC has the authority to prohibit the acquisition of a water carrier or a motor carrier by a rail carrier. ICC may also prescribe joint rates and through routes on intermodal rail-water movements. The deregulation legislation of 1977-80 has resulted in an enormous increase in intermodal traffic. However, there are still some remaining hindrances that could impede intermodal acquisitions. There is no longer any economic rationale for these restrictions. We recommend elimination of all restrictions against intermodal ownership and removal of Federal jurisdiction over intermodal rates, routes, and practices.

Administration of Remaining ICC Functions: TIRRA identified a wide range of organizational choices for relocating ICC functions. These included retaining the ICC in its current form, merging the ICC into DOT as an independent agency, merging ICC into DOT but not as an independent agency, eliminating the ICC and transferring all or some of its functions to DOT or other Federal agencies, and combining the ICC with other Federal agencies (e.g., the Federal Maritime Commission). Each of these alternatives was extensively examined in the Department's study.

Given the dramatic reductions in regulatory authority recommended in this report, it is clear that there is no longer any need to maintain the ICC as an independent agency. Furthermore, given that the functions to be retained are quite diverse (e.g., motor carrier leasing, railroad rate oversight), we do not believe that it makes sense to consolidate these functions, either in a separate agency or discrete agency within DOT. It may be appropriate to house the rail functions in a new rail regulatory unit within the organizational structure of DOT, with labor protection at the Department of Labor.

However, there is no need for such an office to remain completely independent. Most of the remnant regulatory functions are similar to activities currently administered by DOT (or other agencies) without any independent or insulated staff. For those few functions where there is a special need for "insulated" decision-making, (such as resolution of disputes between passenger and freight railroads), appropriate administrative procedures can be readily established.

Careful planning of the transition of functions is important. This includes examination of workload and workflow, space and other physical resources, and processes for performing specific functions within the new organizational framework. The President's Budget for 1996 reflects the Administration's policy to phase out the ICC during fiscal year 1996. Staff and resources are provided in the budgets of DOT, DOJ, and the Federal Trade Commission to handle transferred functions.

It is critical to the transportation industry, shippers, and the economy that transition plans maintain continuity and integrity for any remaining regulatory functions. The Administration proposes that the transition occur during FY1996.

Madame Chairman, this concludes my testimony. We will be submitting our draft report for about two weeks for public comment. Once we have considered those comments, and any that we receive from the Committee, we will promptly finalize the report and submit it to Congress. Detailed provisions to implement the policy recommendations contained in this report will be contained in a legislative proposal to be submitted soon thereafter.